

ESTTA Tracking number: **ESTTA551212**

Filing date: **07/30/2013**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

## Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

### Opposer Information

Name	E. & J. Gallo Winery
Granted to Date of previous extension	07/31/2013
Address	600 Yosemite Blvd. Modesto, CA 95354 UNITED STATES

Attorney information	Steven M. Weinberg Holmes Weinberg, PC 30765 Pacific Coast Highway, Suite 411 Malibu, CA 90265 UNITED STATES hwtrademarks@gmail.com, msalvatore@holmesweinberg.com Phone:310-457-6100
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### Applicant Information

Application No	85459523	Publication date	04/02/2013
Opposition Filing Date	07/30/2013	Opposition Period Ends	07/31/2013
Applicant	CIS-Associates, LLC 1 El Capitan Ct. Alameda, CA 94501 UNITED STATES		

### Goods/Services Affected by Opposition

Class 008. First Use: 2011/06/01 First Use In Commerce: 2011/08/01  
All goods and services in the class are opposed, namely: Kitchen knives; flatware, namely, knives, forks, and spoons

### Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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### Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	891339	Application Date	09/17/1969
Registration Date	05/19/1970	Foreign Priority Date	NONE
Word Mark	GALLO		
Design Mark			

Description of Mark	NONE
Goods/Services	Class U047 (International Class 033). First use: First Use: 1909/00/00 First Use In Commerce: 1909/00/00 WINES [ AND CHAMPAGNES ]

U.S. Registration No.	3210839	Application Date	01/30/2006
Registration Date	02/20/2007	Foreign Priority Date	NONE
Word Mark	GALLO		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 021. First use: First Use: 2006/01/24 First Use In Commerce: 2006/01/24 BEER MUGS, EARTHENWARE MUGS, GLASS MUGS, MUGS, PORCELAIN MUGS		

U.S. Registration No.	3382558	Application Date	12/29/2006
Registration Date	02/12/2008	Foreign Priority Date	NONE
Word Mark	GALLO		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 021. First use: First Use: 2006/12/18 First Use In Commerce: 2006/12/18 BEER MUGS, EARTHENWARE MUGS, GLASS MUGS, MUGS, PORCELAIN MUGS Class 025. First use: First Use: 2007/01/15 First Use In Commerce: 2007/01/15 CAPS, [ SHIRTS, JACKETS ]		

U.S. Registration No.	3440497	Application Date	11/01/2007
Registration Date	06/03/2008	Foreign Priority Date	NONE
Word Mark	GALLO FAMILY VINEYARDS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 018. First use: First Use: 2007/10/01 First Use In Commerce: 2007/10/01 TOTE BAGS, WHEELED TOTE BAGS, BOOK BAGS, WINE BAGS WITH HANDLES FOR CARRYING OR HOLDING WINE Class 021. First use: First Use: 2007/10/01 First Use In Commerce: 2007/10/01 COFFEE CUPS, MUGS, CORK PULLERS, CORKSCREWS Class 025. First use: First Use: 2006/03/31 First Use In Commerce: 2006/03/31 APRONS, CAPS, JACKETS, SHIRTS, SHORTS AND SWEATSHIRTS		

U.S. Registration No.	887959	Application Date	01/17/1969
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Registration Date	03/17/1970	Foreign Priority Date	NONE
Word Mark	GALLO		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class U046 (International Class 001, 005, 029, 030, 031, 032). First use: First Use: 1962/11/19 First Use In Commerce: 1968/07/22 PREPARED MEAT PRODUCTS-NAMELY, SALAME, SAUSAGE, MORTADELLA, CURED MEATS [ , AND MEAT LOAF ] ; AND CHEESE		

U.S. Registration No.	4011309	Application Date	08/03/2010
Registration Date	08/16/2011	Foreign Priority Date	NONE
Word Mark	GALLO SALAME		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use: 1985/05/31 First Use In Commerce: 1985/05/31 Cheese; Processed meat		

Attachments	2013.07.30_Notice of Opposition re GALLOWARE.pdf(26608 bytes )
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### Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/MJSalvatore/
Name	Michael J. Salvatore
Date	07/30/2013

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re Serial No. 85/459,523

E. & J. Gallo Winery,

Opposer,

v.

CIS-Associates, LLC,

Applicant.

Opposition No. \_\_\_\_\_

**NOTICE OF OPPOSITION**

TO: ASSISTANT COMMISSIONER FOR TRADEMARKS  
**BOX TTAB –FEE**  
2900 Crystal Drive  
Arlington, VA 22202-3513

Opposer E. & J. Gallo Winery (“Gallo”), a corporation organized and existing under the laws of the State of California, believes that it would be damaged by registration of the above-referenced mark, and hereby opposes the same. As grounds for this Opposition, Gallo respectfully alleges as follows:

1. Opposer Gallo is a corporation organized and existing under the laws of the State of California having a place of business at 600 Yosemite Blvd., Modesto, California 95354.
2. Gallo is the exclusive owner in the United States, *inter alia*, of the federally registered trademark GALLO for “wines” (Reg. No. 0891339), as registered on the Principal Register on May 19, 1970, and other word and design marks that incorporate the GALLO word mark for wines and related products including GALLO for “beer mugs, earthenware mugs, glass mugs, mugs, porcelain mugs” (Reg. No. 3210839), as registered on the Principal Register on

February 20, 2007, GALLO and Design for “beer mugs, earthenware mugs, glass mugs, mugs, porcelain mugs” (Reg. No. 3382558), as registered on the Principal Register on February 12, 2008, GALLO FAMILY VINEYARDS and Design for “coffee cups, mugs, cork pullers, corkscrews” (Reg. No. 3440497), as registered on the Principal Register on June 3, 2008, GALLO and Design for “prepared meat products-namely, salame, sausage, mortadella, cured meats; and cheese” (Reg. No. 0887959), as registered on the Principal Register on March 17, 1970, and GALLO SALAME for “Cheese; Processed meat” (Reg. No. 4011309), as registered on the Principal Register on May 31, 2011 (collectively, the “GALLO® Marks”).

3. These registrations are valid and enforceable, and Gallo’s exclusive rights in Reg. Nos. 0891339, 3210839, 3382558 and 0887959 are incontestable.

4. Gallo has used the GALLO trademark in the United States since at least the 1950’s. For more than fifty years, Gallo has produced, advertised, promoted, distributed and sold goods and services in interstate commerce under its GALLO® Marks.

5. The mark subject to this Opposition is GALLOWARE, Serial No. 85/459,523 (the “Opposed Mark”) for “Kitchen knives; flatware, namely, knives, forks, and spoons” in International Class 008.

6. Applicant filed United States Application Serial No. 85/459,523 with the U.S. Patent and Trademark Office on or about October 28, 2011. The Application for the Opposed Mark is based on actual use.

7. Because Gallo first used its GALLO® Marks on wines and related products, including barware, glassware and foods, many years before Applicant filed its application for the Opposed Mark, and such use has been continuous, Gallo has priority of use.

8. By virtue of Gallo's long, continuous, extensive and exclusive use and marketing, promotion and sale of, and the widespread sale and purchase of wines and commercially related products including barware, glassware and foods under the GALLO® Marks, the GALLO® Marks have come to be recognized by the relevant public as identifying wines and commercially related products as having their origin or otherwise associated exclusively with Opposer. Further, the GALLO® Marks for wines are "famous."

9. The Opposed Mark for the International Class 008 goods is similar, *inter alia*, in appearance and sound to the GALLO® Marks. The Opposed Mark contains and is primarily comprised of the word "GALLO," and thus evokes a highly similar connotation to the GALLO® Marks. Further, both the Opposed Mark and the GALLO® Marks begin with the word GALLO. Additionally, Applicant is using the Opposed Mark in connection with kitchen knives and flatware, which are commercially related to the International Class 021, 029 and 033 goods for which the GALLO® Marks are used. Accordingly, it is likely that consumers will mistakenly believe that the Opposed Mark for kitchen knives and flatware is connected to or associated with Opposer.

10. The registration of the Opposed Mark would be inconsistent with Gallo's rights in its GALLO® Marks and will cause damage to Gallo.

WHEREFORE, Gallo respectfully prays that registration of the Opposed Mark not be permitted.

DATED this 30th day of July, 2013.

Respectfully submitted,

By: /s/ Steven M. Weinberg  
Steven M. Weinberg  
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Attorneys for Opposer

## **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true copy of the foregoing NOTICE OF OPPOSITION was served by first class mail and email to Applicant's counsel at the following address:

David R. Stevens, Esq.  
Stevens Law Group  
1754 Technology Drive, Suite 226  
San Jose, CA 95110  
[dave.stevens@stevenslawgroup.com](mailto:dave.stevens@stevenslawgroup.com)

DATED: July 30, 2013

By: /s/ Nelda Piper  
Nelda Piper  
Paralegal